

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID MCCOY AND AMY  
MCCOY,

Plaintiffs,

v.

EAST COAST AERO CLUB,  
INC., PLANE NONSENSE,  
MARK HOZWARTH, TIM  
GRESLA, MICHAEL  
MIGNOSA, KEN MURPHY,  
JOHN NUTT, AND NEW  
ENGLAND  
AERONAUTICS, INC.

Defendants.

Case No.: 1:24-cv-13172-DJC

**ANSWER OF**

**EAST COAST AERO CLUB, INC.**

**I. INTRODUCTION**

Defendant respectfully disagrees with the plaintiffs' characterization of their case and specifically denies the facts set forth in the introductory paragraph of the Complaint.

**II. PARTIES**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
3. Defendant admits the allegations set forth in this paragraph of the Complaint.
4. Defendant admits the allegations set forth in this paragraph of the Complaint.
5. Defendant admits the allegations set forth in this paragraph of the Complaint.
6. Defendant admits that Tim Gresla is an individual with a residential address of 18 Samoset Road, Winchester, Middlesex County, Massachusetts 01890 but otherwise denies the remainder of this paragraph of the Complaint.
7. Defendant admits that Michael Mignosa, is an individual with a residential address of 323 Vernon Street, Wakefield, Middlesex County, Massachusetts 01880 but otherwise denies the remainder of this paragraph of the Complaint.
8. Defendant admits that Ken Murphy, is an individual with a residential address of 3 Fairfax Street, Burlington, Middlesex County, Massachusetts 01830 but otherwise denies the remainder of this paragraph of the Complaint.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

### **III. FACTS**

11. Defendant admits that as part of its business it engages in the rental of aircraft and flight instruction.
12. Defendant denies the allegations set forth in this paragraph of the Complaint.
13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
14. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.
15. Defendant denies engaging in any “inappropriate conduct” or causing any damages allegedly suffered by the plaintiffs. Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
16. Defendant denies engaging in any “inappropriate conduct” or causing any damages allegedly suffered by the plaintiffs. Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
17. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.
18. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.
19. Defendant denies the allegations set forth in this paragraph of the Complaint.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

21. Defendant admits that it received a demand letter prior to the plaintiffs filing this suit but denies committing any objectionable behavior in any capacity.

22. Defendant denies the allegations contained in this paragraph of the Complaint.

23. Defendant denies the allegations set forth in this paragraph of the Complaint.

24. Defendant denies the allegations set forth in this paragraph of the Complaint.

### **COUNT I – NUISANCE**

25. Defendant incorporates herein by reference its responses to Paragraphs 1 through 24 of the Complaint as its answer to this paragraph of the Complaint.

26. Defendant denies the allegations contained in this paragraph of the Complaint.

27. Defendant denies the allegations contained in this paragraph of the Complaint.

28. Defendant denies the allegations contained in this paragraph of the Complaint.

29. Defendant denies the allegations contained in this paragraph of the Complaint.

### **COUNT II (NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**

30. Defendant incorporates herein by reference its responses to Paragraphs 1 through 29 of the Complaint as its answer to this paragraph of the Complaint.

31. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.

32. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.

33. Defendant denies the allegations set forth in this paragraph of the Complaint.

34. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.

35. Defendant denies the allegations set forth in this paragraph of the Complaint.

**COUNT III – NEGLIGENCE  
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

36. Defendant incorporates herein by reference its responses to Paragraphs 1 through 35 of the Complaint as its answer to this paragraph of the Complaint.

37. Defendant denies the allegations set forth in this paragraph of the Complaint.

38. Defendant denies the allegations set forth in this paragraph of the Complaint.

39. Defendant denies the allegations set forth in this paragraph of the Complaint.

40. Defendant denies the allegations set forth in this paragraph of the Complaint.

41. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

**COUNT IV  
(UNFAIR AND DECEPTIVE ACTS AND PRACTICES)**

42. Defendant incorporates herein by reference his responses to Paragraphs 1 through 41 of the Complaint as its answer to this paragraph of the Complaint.

43. Defendant denies the allegations set forth in this paragraph of the Complaint.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same. Defendant also states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.

45. Defendant admits receiving a letter purportedly sent on behalf of the plaintiffs but deny all allegations set forth in that letter dated June 5, 2024. .
46. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
47. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph regarding the receipt of the response letter and otherwise deny the remaining allegations in this paragraph of the Complaint.
48. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.
49. Defendant states that this paragraph contains a conclusion of law to which an answer is not required and calls upon plaintiff to prove same.
50. Defendant denies the allegations set forth in this paragraph of the Complaint.

**WHEREFORE**, Defendant prays that judgment enter dismissing the Complaint against it and for costs, attorney's fees and for any other or further relief which this court deems equitable and just.

#### **FIRST AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint should be dismissed pursuant to Rule 12(b)(4) for insufficiency of process.

## **SECOND AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint should be dismissed pursuant to Rule 12(b)(5) for insufficient service of process.

## **THIRD AFFIRMATIVE DEFENSE**

And further answering, the Defendant says that the Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

## **FOURTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says Plaintiffs have failed, in whole or in part, to prevent or to mitigate their alleged damages.

## **FIFTH AFFIRMATIVE DEFENSE**

And further answering, Plaintiffs' damages, if any, were not caused by the breach of any common law, statutory, or regulatory duty owed by the Defendant.

## **SIXTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that to the extent that it had any obligations to the Plaintiff, such obligations have been fully, completely and properly performed in every respect.

## **SEVENTH AFFIRMATIVE DEFENSE**

And further answering, Plaintiff's damages, if any, were not a foreseeable consequence of any act or omission of the Defendant.

#### **EIGHTH AFFIRMATIVE DEFENSE**

And further answering, Plaintiffs' claims for loss and/or damages are excessive and unsupported by the evidence.

#### **NINTH AFFIRMATIVE DEFENSE**

And further answering, Plaintiffs have not suffered any actual loss, injury, or damage caused by the Defendant's alleged actions.

#### **TENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Plaintiffs' Complaint, and each of the causes of action asserted therein, is barred by Laches in that the Defendant has been prejudiced by the excessive delay of the Plaintiffs in seeking the relief requested.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that it has not engaged in trade or commerce with the plaintiffs and therefore no viable claim can be made by the plaintiffs against this defendant.

#### **TWELFTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred by the doctrine of estoppel.



#### **THIRTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred by the doctrine of economic loss.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred by statute of frauds.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred by a failure to join a necessary party.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, are barred in whole or in part by the doctrine of waiver; i.e., the Plaintiff voluntarily and knowingly relinquished any known and appreciated rights they she have had.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred in whole or in part because the Plaintiff did not have any actual loss, injury or damage causally related to any action or inaction by this Defendant.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the cause of action asserted against it is barred

in whole or in part because the Defendant was neither the cause in fact or proximate cause of any loss, injury or damage alleged in the Complaint.

**NINETEENTH AFFIRMATIVE DEFENSE**

And further answering, the Defendant says that if the Plaintiff proves that the Defendant was negligent as alleged, the Plaintiff was negligent to a greater degree than the Defendant and is barred from recovery under the Comparative Negligence Law of the Commonwealth of Massachusetts.

**TWENTIETH AFFIRMATIVE DEFENSE**

And further answering, Defendant says that, the remedies sought are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

And further answering, Defendant says that the Complaint, and each cause of action asserted therein, is barred by the plaintiffs' failure to mitigate their damages.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

And further answering, Defendant says that it did not engage in trade or commerce with either plaintiff and therefore plaintiffs' purported claim asserted under c. 93A must necessarily be dismissed.

### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

And further answering, Defendant says that it may have additional affirmative defenses available which cannot be articulated at this time, but which may be revealed after further discovery and/or investigation. Accordingly, the Defendant reserves the right to assert additional affirmative defenses once such defenses have been fully ascertained.

**WHEREFORE**, Defendant prays that judgment enter dismissing the Complaint against him and for costs, attorney's fees and for any other or further relief which this court deems equitable and just.

### **JURY CLAIM**

DEFENDANT CLAIMS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE PURSUANT TO FED R. CIV. P. 38(b).

Respectfully submitted,

EAST COAST AERO CLUB, INC.,

By its Attorney,

/s/ Kevin C. Cain

Kevin C. Cain (BBO #550055)

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**CERTIFICATE OF SERVICE**

I, Kevin C. Cain, hereby certify that on this 19<sup>th</sup> day January 2025, a copy of the foregoing ANSWER was filed and served through the court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

*/s/ Kevin C. Cain*

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Kevin C. Cain